

Office of the Attorney General
State of LOUISIANA

Opinion No. 79-628
July 20, 1979

9 CIVIL SERVICE COMMISSION

71-1-1 MUNICIPAL FIRE & POLICE CIVIL SERVICE

Fire and police civil service board may not adopt a promotional scheme which reduces the significance given to seniority under the constitution of 1921.

Article X, s 17&18, LA. Const. 1974 LA. R.S. 33:2494

Honorable Kenneth P. Bowen
Mayor
City of Lafayette
Office of the Mayor
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ATTENTION: Mr. Clay Latimer
Legal Research Assistant

Dear Mayor Bowen;

You have requested an opinion of this office as to the propriety of the Municipal Fire and Police Civil Service Board of the City of Lafayette developing and implementing a promotion system which is based upon merit, efficiency, fitness and length of service to replace the current system which is based upon successful examination results and seniority. You state that the proposed system would not eliminate the weight to be given seniority, but it would reduce the significance of seniority in light of merit, efficiency and fitness.

For the reasons set forth below, it is our opinion that the Municipal Fire and Police Civil Service Board of the City of Lafayette cannot, at this time, adopt a promotion plan which conflicts with the provisions set forth in Article XIV, Section 15.1 of the LOUISIANA Constitution of 1921.

Article X Section 17 of the LOUISIANA Constitution of 1974 provides as follows:

s 17. Appointments and Promotions

Section 17. Permanent appointments and promotions in municipal fire and

police civil service shall be made only after certification by the applicable municipal fire and police civil service board under a general system based upon merit, efficiency, fitness, and length of service as provided in Article XIV, Section 15.1 of the Constitution of 1921, subject to change by law enacted by two-thirds of the elected members of each house of the legislature.

The following section, Sect. 18, provides in part:

s18. Prior Provisions

Section 18. Except as inconsistent with this Part, the provisions of Article XIV, Section 15.1 of the Constitution of 1921 are retained and continued in force and effect as statutes. By law enacted by two-thirds of the elected members of each house, the legislature may amend or otherwise modify any of those provisions, but it may not abolish the system of classified civil service for such firemen and municipal policemen or make the system inapplicable to any municipality having a population exceeding thirteen thousand according to the latest decennial federal census or to any parish or fire protection district operating a regularly paid fire department.

An initial reading of Section 17 could lead one to believe that promotions must be made pursuant to a general system that gives weight to merit, efficiency, fitness and length of service. A review of relevant portions of the transcripts of the debates at the 1973 Constitutional Convention reveals that many of the delegates actually believed that the system for promotions mandated by Article XIV, Section 15.1 of the Constitution of 1921 already provided for some consideration to be given to merit, efficiency, fitness, and length of service.

The delegate who proposed this particular language for Article X, Section 17 was Gordon Flory, the delegate appointed to represent Labor. In explaining his amendment, Mr. Flory made it clear that the intent of his amendment was to retain these four standards for promotions but to allow the legislature to weight it and decide what weight should be given to each standard. In answer to questions concerning the wording of his amendment, Mr. Flory answered as followed:

Mr. Lanier:

Mr. Flory, the clause 'as provided in Article XIV, Section 15.1 of the 1921 Constitution,' is that intended to modify only length of service or is it also intended to modify merit, efficiency, and fitness?

Mr. Flory:

I think it is all encompassing under all four categories, Mr. Lanier.

Mr. Lanier:

Well, then if it is intended to apply to all four, and merit, efficiency,

and fitness were not set forth as considerations in Article XIV, Section 15.1 that means that they would not be considered; is that correct?

Mr. Flory:

No, I think they're all set forth in some fashion, Mr. Lanier.

[23 Verbatim Transcripts, LA. Const. Conv. of 1973 (Dec. 15, 1973), p. 20]

Further, when asked if his amendment would allow merit, efficiency and fitness to be considered on an equal basis with seniority, Mr. Flory stated that this matter should be determined by the legislature and then applied by the local board. See 33 Verbatim Transcripts, LA. Const. Conv. of 1973 (Dec. 15, 1973) p. 23.

Finally, it should be noted that an amendment was proposed by Delegate Denberry which read as follows:

'Permanent appointments and promotions in municipal fire and police civil service shall be made only after certification by the applicable Municipal Fire and Police Civil Service Board under a general system based upon merit, efficiency and fitness, and which also shall give consideration to length of service.'

33 Verbatim Transcript, LA. Const. Conv. of 1973 (Dec. 15, 1973) p. 42.

This amendment did not incorporate the provisions of the 1921 Constitution, rather made it clear that a system could be adopted that gave consideration to all four standards. However, this amendment was rejected. Therefore we must conclude that the redactors clearly intended to retain the same promotional test provided for in Section 15.1 of the Constitution of 1921 until such time as two-thirds of the legislature voted to allow a different system.

Finally, we must note that R.S. 33:2494 (which you cite in your letter) clearly states that when a vacancy cannot be filled by reinstatement, or by re-employment, it will be filled from the promotional list. Further, the person on the promotional list with the greatest seniority in the departmental service must be appointed to the vacancy. The wording in R.S. 33:2494 is identical to the wording of Subsection 24(C) of Article 14, Section 15.1 of the Constitution of 1921, which was made Statutory in the 1974 Constitution by Art. X, s 17. A review of the statutes reveals that this section has not been amended by the Legislature. Therefore, it is the opinion of this office that any promotional system adopted by the Municipal Fire and Police Civil Service Board of the City of Lafayette which would reduce the significance of seniority in the above cited situation would conflict with R.S. 2494 and Subsection 24(C). Article IV, Section 15.1, Subsection 8 of the Constitution of 1921, which was also made statutory in the 1974 Constitution by Article X, s 17 specifically prohibits a local board from adopting any rule or regulation which is contrary to any provisions of the law.

We trust this answers your question. If we can be of further assistance please do not hesitate to contract us at your convenience.

Very truly yours,

William J. Guste, Jr.
Attorney General

By: Lois C. Davis
Assistant Attorney General

La. Atty. Gen. Op. No. 79-628, 1979 WL 38996 (La.A.G.)
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